

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD A. DIEDRICH
and HARVEY G. KIEL

Appeal No. 1996-3273
Application 08/127,932

ON BRIEF

Before JERRY SMITH, FLEMING, and BARRY, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-6, which constitute all the claims in the application.

The disclosed invention pertains to a method in a distributed data processing system for the interchange of multimedia data and non-multimedia data between a plurality of receiving stations and a sending station. More particularly,

Appeal No. 1996-3273
Application 08/127,932

the invention transfers data to a transmission queue within the sending station based on both the availability of the transmission queue and on multimedia pacing requests.

Representative claim 1 is reproduced as follows:

1. A method in a distributed data processing system for the interchange of multimedia data and non-multimedia data between a plurality of receiving stations and a sending station, wherein said sending station contains a transmission queue, said method comprising the steps of:

transmitting a multimedia pacing request from one of said plurality of receiving stations to said sending station at selected time intervals,

periodically determining an availability of said transmission queue within said sending station, and

selectively transferring said multimedia data and said non-multimedia data to said transmission queue in a selected order in response to both said determined availability of said transmission queue and said multimedia pacing requests, wherein said method increases the overall information flow through said transmission queue.

The examiner relies on the following references:

Blasbalg	4,771,391	Sep. 13, 1988
----------	-----------	---------------

The admitted prior art set forth in appellants' specification.

Claims 1-6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by the disclosure of Blasbalg. Claims 1-6 also stand rejected under 35 U.S.C. § 103 as being

Appeal No. 1996-3273
Application 08/127,932

unpatentable over the admitted prior art set forth in appellants' specification.

Rather than repeat the arguments of appellants or the examiner, we make reference to the brief and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the brief along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the invention of claims 1-6 is not fully met by the disclosure of Blasbalg. We are also of the view that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the

Appeal No. 1996-3273
Application 08/127,932

art the invention as set forth in claims 1-6. Accordingly, we reverse.

We consider first the rejection of claims 1-6 under 35 U.S.C. § 102(b) as being anticipated by the disclosure of Blasbalg. These claims stand or fall together as a single group

[brief, page 7]. Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

The examiner indicates how he perceives the claimed invention to read on the disclosure of Blasbalg [answer, pages

3-4]. Appellants argue that Blasbalg does not show or suggest the transferring of multimedia data and non-multimedia data to the transmission queue of the sending station in response to both the determined availability of the transmission queue and the multimedia pacing requests [brief, pages 7-9]. The examiner responds that Blasbalg teaches a method of pacing by changing the size of the packet, which according to the examiner, is equivalent to changing the window size of the data [answer, page 6].

We agree with appellants. Blasbalg teaches transferring data between a sending station and a receiving station based on a single factor. That single factor is the traffic load condition of the network. In other words, when the traffic flow rate in the network increases, the size of data packets transmitted also increases. Likewise, the size of data packets in Blasbalg decreases when the traffic flow rate decreases. This single factor in Blasbalg has nothing to do with the availability of a transmission queue in the sending station.

Appeal No. 1996-3273
Application 08/127,932

Since Blasbalg neither monitors the availability of a transmission queue in the sending station nor transmits data based on this availability, Blasbalg does not fully meet the invention as set forth in claims 1-6. Therefore, we do not sustain the rejection of claims 1-6 under 35 U.S.C. § 102(b).

We now consider the rejection of claims 1-6 under 35 U.S.C. § 103 as being unpatentable over the admitted prior art set forth in appellants' specification. In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been

led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a

Appeal No. 1996-3273
Application 08/127,932

whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicants to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See Id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976).

The examiner's rejection points to the prior art discussed in appellants' specification at page 4, lines 5-14. This admitted prior art discusses the technique of "pacing" to control the transmission of data. Appellants' specification notes that sophisticated pacing techniques are available for the transmission of non-multimedia data, but that no pacing techniques exist for the transmission of multimedia data. Despite this express statement in the specification, the examiner finds that it would have been obvious to apply the known prior art pacing techniques used for non-multimedia data to multimedia data since there is no difference in such data which is apparent to the transmission system [answer, page 5].

Appellants argue that the pacing techniques referred to in the specification do not teach or suggest the claimed technique of transmitting multimedia data and non-multimedia data based on both the determined availability of the transmission queue of the sending station and the multimedia pacing requests as set forth in each of the appealed claims [brief, pages 9-10].

We again agree with appellants. The admitted prior art of appellants' specification in no way suggests that a

Appeal No. 1996-3273
Application 08/127,932

transmission queue of a sending station should be monitored
and its availability used in determining when to transfer data
to the

transmission queue in combination with multimedia pacing
requests. In fact, the admitted prior art expressly states
that

multimedia pacing requests do not exist. Therefore, the
admitted prior art does not support the examiner's rejection,
and we do not sustain this rejection of claims 1-6.

In summary, we have not sustained either of the
examiner's rejections of claims 1-6. Therefore, the decision
of the examiner rejecting claims 1-6 is reversed.

REVERSED

JERRY SMITH)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
)	
MICHAEL R. FLEMING)	APPEALS AND
Administrative Patent Judge)	
)	INTERFERENCES
)	
)	
)	

Appeal No. 1996-3273
Application 08/127,932

LANCE LEONARD BARRY)
Administrative Patent Judge)

JS/kis

Andrew J. Dillon
FESLMAN, BRADLEY, GUNTER & DILLON, LLP
Suite 350, Lakewood on the Park
7600B North Capital of Texas Highway
Austin, TX 78731